IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1756 of 2004
in
SPECIAL CIVIL APPLICATION No 1581 of 1998

WITH
LETTERS PATENT APPEAL No.238 of 2005
in
SPECIAL CIVIL APPLICATION No.1581 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHOLKA NAGARPALIKA
Versus
DASRATHBHAI R RABARI

Appearance:
1. LETTERS PATENT APPEAL No. 1756 of 2004
MR RA PATEL for Appellant No.
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.S.GARG
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/05/2005

COMMON ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE R.S.GARG)

Heard learned counsel for the parties. This order shall dispose of Letters Patent Appeal No.1756 of 2004, so also Letters Patent Appeal No.238 of 2005. For proper appreciation of facts it is to be noted that Dashrathbhai Ramjibhai Rabari made a reference before the Labour Court which allowed the same and directed reinstatement with partial back wages. Being aggrieved by the said order Dholka Municipality filed Special Civil Application No.1581 of 1998 and made prayer to the learned Single Judge that the effect and operation of the award made by the learned Labour Court be stayed. A submission was made before the learned Single Judge that the workman was gainfully employed, therefore and as the present was a case of illegal reinstatement the effect and operation of the award be stayed. The workman denied the allegation of gainful employment but however submitted that he was engaged in miscellaneous work for earning livelihood. To counterblast this submission officer of Dholka Municipality has filed further affidavit along with certain photographs to show and project that the workman was running a pan parlour and was also engaged in the business of photography. The learned Single Judge after hearing the parties observed that the present was not a case where workman was gainfully employed. He, however ordered that the Municipality can either offer work to the workman as daily wager without prejudice to the rights and contentions raised in the petition or may continue to pay wages under section 17B of the Industrial Disputes Act (hereinafter referred to as "the Act") without taking any work from him. The learned Single Judge however, further ordered that the order shall become effective from March 2004. Being aggrieved by the said order Dholka Municipality has filed Letters Patent Appeal No.1756 of 2004, while the workman has filed Letters Patent Appeal No.238 of 2005. The submission of learned counsel Mr.Patel for the appellant is that the learned Single Judge was absolutely unjustified in directing enforcement of section 17B of the Act especially when the workman was raising false and illegal pleadings. His submission is that if the workman was gainfully employed and was earning his livelihood an order under section 17B of the

Act could not be passed. The say of the workman from his appeal memo appears to be that the learned Judge should have directed payment of wages from the date of the award and should have made the order enforceable from the date of the Special Civil Application filed by the Municipality.

2. We have heard both the sides.

3. The submission of the appellant Dholka Municipality that the appellant is gainfully employed is misconceived. It would be altogether different that a person is engaged in earning his livelihood and one is gainfully employed. The words, 'gainfully employed' may to some extent cover within its sweep 'self employment' or 'business', but for that some evidence will have to be brought on record that a man is gainfully employed to the extent of salary which he could receive. It is not expected of a person that during pendency of reference or during pendency of litigation at the High Court level, he would not do anything and would starve. Can a person begging on road and earning livelihood is to be taken to be gainfully employed or can a person who is earning his bread would be deemed to be in gainful employment? In our considered opinion the words, 'gainful employment' do not mean earning livelihood only to meet both the ends. Barring filing of photographs no further details have been filed by the appellant Municipality to show or submit that what is the regular income of the respondent workman especially when he says that he was engaged in miscellaneous work. The appeal filed by Dholka Municipality, i.e. Letters Patent Appeal No.1756 of 2004 deserves to be and is accordingly rejected with a cost of Rs.3,000/- (Rupees three thousand only).

4. So far as appeal of the workman is concerned after going through the order passed by the learned Single Judge, we are of the opinion that he also does not deserve any relief because the order passed by the learned Single Judge is in accordance with law. Letters Patent Appeal No.238 of 2005 too is dismissed.

(R.S. Garg, J.)

(Ravi R. Tripathi, J.)

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